UNIVERSITY OF TORONTO
3 1761 01100587 3

Cummins, Albert Baird
Railway transportation
in the United States

HE
2757
1923
C84

Congress - - - - - - - - - - - - - Senate Committee Print

RAILWAY TRANSPORTATION IN THE UNITED STATES

BY
SENATOR ALBERT B. CUMMINS

LIBRARY
APR 29 1929
UNIVERSITY OF TORONTO

Printed for the use of the Committee on Interstate Commerce

WASHINGTON
GOVERNMENT PRINTING OFFICE
1923

HE
2757
1923
C84

LIBRARY
JAN 2 1964
UNIVERSITY OF TORONTO

874224

RAILWAY TRANSPORTATION IN THE UNITED STATES.

Article I.

FUNDAMENTALS OF TRANSPORTATION — ADEQUATE FACILITIES NECESSARY — EFFECT UPON PRODUCTION — ANNUAL LOSSES TO COUNTRY CAUSED BY SHORTAGE OF FACILITIES.

It is my purpose to consider, in a series of brief articles, the subject of railway transportation in the United States, having in mind the legislation which Congress has enacted for its control and regulation. My principal object is to lay the uncontroverted and undisputed facts, as they appear in the public records, before the people in order that they may draw from them just and intelligent conclusions. I will be compelled now and then to interweave with these statements argumentative matter, and to refer to some decisions of the Supreme Court of the United States interpreting and applying the Federal Constitution, but mainly the discussion will be confined to the facts as they are known to exist. A long and varied experience has taught me that if the people are accurately informed upon any given subject their conclusions will generally be sound and their action in establishing public policies will promote the best interests of the whole country.

These articles will be published in the Des Moines Register from day to day or from week to week, as the convenience of that paper may require, and I acknowledge in advance my great obligation to the publishers of the paper for giving publicity to my views upon questions vital to the progress and prosperity of the men and women who make up the population of the most powerful Nation in all the world.

It is first to be observed and never for a moment forgotten that the fundamental problem in transportation is, How can we secure and maintain systems of railways that will, with reasonable promptitude and with reasonable safety, carry commodities from the places of production to the places of use or consumption at the lowest practicable charge for the service? Saying nothing about rates at the present time, it is admitted everywhere and by everybody that our existing railways are incapable of performing this service in an efficient, adequate way. Not because the managers of these systems are incompetent, but because railway facilities are inadequate. Competency alone will not make these facilities adequate. It will require both competency and very large expenditures of money to make them adequate.

To emphasize the vital character of this particular problem I suggest that our facilities for transportation measure and limit our capacity for production. However inexhaustible our resources may

be, and no matter how eager capital may be to invest in productive enterprises, if the commodities which we are able to produce can not be moved when they ought to be moved to the markets of the country, or the places for use and consumption, they can not be and will not be produced; and it will be remembered, too, that the facilities of transportation restrict not only the manufacturer and the farmer, our chief producers, but the merchant, the middleman, and, indeed, every other business activity in the same degree.

It is well known that our present railway facilities are insufficient to handle the business of the country, and this has been true for many years. The shortage of facilities has been more marked in some years than others, but it has been a continuing condition. If the volume of traffic could be distributed so that one three-hundred-and-sixty-fifth part of the year's business could be offered for transportation each day, or even if one-twelfth part could be offered each month, the shortage would not be so serious. There are, however, seasonal peaks and depressions in transportation, and must always be. It is therefore necessary, if the railways are to move the traffic at the times it should be moved, that the railways must be provided with facilities that are not constantly in use, and this requirement increases, of course, the capital that must be invested in railway property.

It is quite impossible to estimate with a high degree of accuracy the losses which are suffered by reason of the acknowledged shortage of transportation facilities. But the most casual survey of past conditions leads to the conclusion that they are enormous in amount. They are of two classes: First, actual losses, which have occurred by reason of the inability to market commodities in existence and which are ready for sale. The farmers, with their cattle, hogs, and grain furnish the best illustration of such losses. Second, indirect losses, sustained because production is restrained and the natural growth and development of the country is to some extent checked.

It is not necessary to enlarge upon this phase of the subject, and it is mentioned simply to make it perfectly clear that our transportation facilities must not only be enlarged to meet the existing demands, but that they must continue to expand from year to year, keeping pace with our capacity to produce.

In my next article I will attempt to describe our existing transportation plant and facilities, what it costs to maintain and operate them, and the additional capital that must be annually secured in order to enable the railways to render the service which the business of the country imperatively requires.

ARTICLE II.

MODERN TRANSPORTATION FACILITIES—MAIN AND TERMINAL TRACKAGE, LOCOMOTIVES, CARS—COST OF MAINTENANCE AND OPERATION—NEW CAPITAL REQUIRED FOR ADDITIONS, BETTERMENTS, AND EXTENSIONS.

Taking up the subject proposed in the closing paragraph of my first article I submit a general outline of our railway property used in the service of transportation. We have 265,000 miles of main track, with about half as much more side, passing, and terminal

tracks, and the necessary road bed, bridges, rights of way, lands, lots, station houses, warehouses, elevators, machine shops, office buildings, and an almost infinite variety of other equipment. We have 70,000 locomotive engines; we have 58,000 cars of various kinds used in passenger service; we have 2,600,000 freight cars. This is not intended as an accurate description of all the physical property used in transportation, but it will give a general idea of the magnitude of the plant which has been created to render the service which the railways are now supplying, and yet as great as this property is in extent, it is unable to meet the requirements of our enormous commerce.

Of the total main track mileage, i. e., 265,000 miles, 235,000 miles are owned or operated by companies known, in the terminology of the interstate commerce commission, as class 1 railways (including the larger switching and terminal companies). Class 1 railways are railways which have annual operating revenues amounting to $1,000,000, or more. In what I am about to say I am excluding the 30,000 miles owned or operated by more than 800 less important companies, because the information I am submitting is not at hand for those companies.

The cost of maintaining and operating the class 1 railways, including the large switching and terminal companies, was for the year 1921, $4,603,806,907, and for the year 1922, $4,455,650,216. I think it will be conceded by every student of the subject, that the amounts expended for maintenance and operation during these years was less than it should have been, and less than it would have been if the railways had been in financial position to have expended more. The shortage of transportation facilities, so acute in 1921 and 1922, would not have been so marked if the railways had been able to keep their engines and cars in proper repair. However that may be, it is safe to assume that the class 1 railways will require each year of the immediate future from $4,500,000,000 to $5,000,000,000 to maintain and operate with fair efficiency their existing facilities, with no additions, no betterments, and no extensions, the cost of which, if made, would be properly chargeable to capital account.

I believe my readers will all agree with me that it is simply unthinkable that there shall be no enlargement of our transportation facilities. No man who has ever given serious consideration to this subject and who feels that the country will continue to grow will doubt the statement that if we are to have an adequate system of railway transportation there must be expended each year, and for years to come, for additions, betterments, and extensions, from $750,000,000 to $1,000,000,000. It is not to be expected that any considerable part of this additional investment can be raised through rates charged for transportation service. Substantially all of it ought to come, and must come, from investors who are willing to embark new capital in the enterprise of transportation.

At this point we reach the first great question in the governmental control of railways and must decide whether these systems of transportation shall remain in private ownership under public regulation or whether they shall pass into Government ownership and operation. If we adopt the latter policy, the money necessary for the enlargement of transportation facilities will of course be raised by general taxation or the issuance of Government securities, assuming

that a sufficient amount for maintenance and operation and a fair return upon the present value of the properties is secured through charges for the services rendered. I am opposed to the Government ownership of railways for reasons which I will give later on and which far outweigh, in my opinion, all the advantages which the advocates of this plan urge upon the country. I am now considering what must take place if we are successfully to maintain the policy of private ownership under public control and regulation.

It is obvious that the revenues of the railway systems, taken as a whole, must be sufficient to operate and maintain the properties and to yield a fair return upon their value as ascertained according to the law of the land. This is true not only because the Constitution commands it as against any act of the Government in fixing rates, but also because the roads could not be operated as a whole for any great length of time under any other condition. Moreover, the annual additions to capital of not less than $750,000,000, in the average, would not be contributed under any other condition. Those who have the money must invest it voluntarily, and it needs no long argument to prove that unless these persons believe that their money will be secure and that they will receive fair interest or dividends upon it they will not invest it in either railway stocks or bonds.

Let it be clearly understood that I am not at this moment discussing the value of existing railway property nor the methods of ascertaining that value. This question is an exceedingly important one, and I recognize not only its importance but its difficulties; I will give full attention to it in another article. I am intent now upon impressing upon the minds of the people of Iowa just one vital truth; namely, that our present policy of private ownership can not endure unless the railways, taken as a whole, can earn the cost of their maintenance and operation, with a fair return upon the value of the property which renders the service; if they do not, the necessary extensions, additions, and betterments can not be made and many of the facilities will fall into inefficiency, if not total disuse.

In my next article I will take up the experience of the railways since Government operation ceased on March 1, 1920.

Article III.

EXPERIENCE OF THE RAILROADS FOLLOWING GOVERNMENT OPERATION—INSUFFICIENT EARNINGS OF SOME CLASS I ROADS AND OF NEARLY ALL SHORT-LINE ROADS.

In 1920, a year that embraced 2 months of Government operation and 10 months of private operation, the net railway operating income of the Class I railways was $58,151,863. The phrase "net railway operating income" means, in the reporting and accounting system of the Interstate Commerce Commission, the sum applicable to the payment of dividends upon stock or interest upon bonds. The above amount does not include the sums paid by the Government under the standard contracts with the railways from March 1 to September 1, 1920. It is about one-third of 1 per cent upon the valuation of all the railway property as fixed by the Interstate Commerce Commission and about one-tenth of the annual interest upon outstanding bonds and obligations.

In 1921 the net railway operating income of these roads was $615,945,614, about 3⅓ per cent upon the value so fixed and just a trifle more than was required to pay interest on bonds and other obligations. For the year 1922 the net railway operating income of these roads was $776,665,950, about 4⅛ per cent on the value and something like $150,000,000 more than enough to pay interest on bonds and other obligations, and which could have been applied to dividends upon stock.

At this point it may be remarked that notwithstanding the shortage of facilities there was more freight moved in 1922 than in any year in the history of the country. In order that every reader may understand the full significance of these figures it ought to be remembered that the only general increase in freight or passenger rates which has occurred since March 1, 1920, took effect on the 1st of September, 1920. It must also be borne in mind that these statistics I have given are for Class I railways as a whole. Some of them made more than this percentage and some very much less, and inasmuch as we must provide for the entire country and each of its communities it is necessary to examine the subject in a little closer detail.

In 1922, and under the high rates then prevailing, 23 of these Class I railways, representing a main-track mileage of more than 8,000 miles, failed to earn the expenses of maintenance and operation, the aggregate deficit being between nine and ten millions of dollars. Of these same railways, companies representing a main-track mileage of 23,000 miles earned from a fraction of 1 per cent to less than 3 per cent. Of the 30,000 miles of so-called short-line railways—that is to say, railways having gross operating revenues of less than $1,000,000 per year, not included in the above computation—many of the lines earned less than operating expenses and very few of them earned as much as 3 per cent on the lowest possible estimate of the value of their properties.

These are startling statistics, gathered from a year in which the railways carried the maximum volume of traffic at the highest rates ever known. It is my deliberate judgment that under present conditions a railway that does not earn a net operating income of at least 5½ per cent upon the value of the property rendering the service can not secure the new capital absolutely necessary for the enlargement of its facilities to meet the expanding demand of our constantly increasing production, and that railways which earn less than 3 per cent upon that value must eventally be abandoned and dismantled. This means, if the situation remains as it is, inadequate additions and betterments upon about one-half of our entire mileage and the complete disuse of between 60,000 and 70,000 miles of railway which now render the only transportation service for many millions of our people.

I have profound faith in the genius of our institutions and I am not suggesting that this indescribable injury will ever be inflicted upon our people, but I am suggesting that the solution of the problem will require something more than fierce denunciation or harsh criticism. No one knows better than I do the flagrant offenses which have been committed by railway promoters in the construction and the financing of many of our railways, and no one has been more active than I have been during the last 20 years in the effort to

prevent a repetition of these offenses. Under existing legislation a repetition is impossible, and to secure that legislation I have devoted the best years of my life. The object which now interests me is to take this railway system of ours as it is and make it competent to render the constantly increasing service which the welfare of the country requires; it must be maintained and advanced to its proper state of efficiency and adequacy.

Heretofore I have, in the main, been treating the subject as though the railways were all owned by a single corporation. They are, in fact, owned and operated by a thousand corporations or more. The number of Class I roads varies from year to year; in 1922 they numbered a little less than 200. While I have referred to the insufficient earning of some of the Class I roads and nearly all of the short-line roads, I desire now to take up that phase of the subject from another standpoint.

There is little difficulty in dealing with such roads as the Pennsylvania, the New York Central, the Baltimore & Ohio, the Erie, or the Chesapeake & Ohio, in the East; the Louisville & Nashville, or the Southern, in the South; or the Chicago & North Western, the Chicago, Burlington & Quincy, the Southern Pacific, the Union Pacific, the Chicago, Rock Island & Pacific, the Atchison, Topeka & Santa Fe, the Northern Pacific, or the Great Northern, in the West. To those I have named may be added many other comparable roads. These properties will be able under any probable legislation to maintain themselves, but what will we do with such roads (and I will take them in their alphabetical order) as the Atlanta, Birmingham & Atlantic, with its 640 miles of main track, that in 1922 failed to earn operating expenses by nearly one-half of a million of dollars; the Atlantic City Railroad, with its 177 miles, operating at a net loss of nearly $200,000; the Buffalo, Rochester & Pittsburgh, with its 590 miles, earning less than $1,000 per mile; the Central of Vermont, with its 532 miles, earning less than $800 per mile; the Chicago & Alton, with its 1,050 miles earning about $1,500 per mile; the Chicago & Erie, with its 270 miles, suffering a net loss of $1,500,000; the Chicago Great Western with its 1,500 miles and a net income of only $265,000; the Chicago, Milwaukee & St. Paul, with 11,000 miles and a net income of a little more than $1,000 per mile; the Chicago, Peoria & St. Louis, with its 247 miles and a net loss of $450,000; the Cincinnati, Indianapolis & Western, with its 347 miles and a net income of $60,000; the Colorado & Southern, with its 1,100 miles and a net income of a thousand dollars per mile; the Denver & Salt Lake, with its 235 miles and a net loss of $150,000; the Detroit & Mackinac, with its 385 miles and a net income of $57,000; the Detroit, Toledo & Ironton (Ford's road), with its 455 miles and a net loss in operation of $159,000; the Duluth, South Shore & Atlantic, with its 591 miles and a net income of $87,000; the Fort Smith & Western, with its 250 miles, earning about $600 per mile; the Fort Worth & Rio Grande, with its 255 miles and a net loss of $250,000; the Georgia & Florida, with its 405 miles and a net income of $100,000; the Georgia Southern & Florida, with its 402 miles and a net income of $395,000; the Green Bay & Western, with its 258 miles and a net income of $160,000; the Kansas, Mexico & Orient, with its 748 miles,

failing to earn operating expenses by $475,000; the Los Angeles & Salt Lake, with its 1,140 miles, earning a trifle over $1,000 per mile; the Louisiana Railway & Navigation Co., with its 343 miles and a net income of $88,000; the Minneapolis & St. Louis, with its 1,650 miles and a net income of $83,800; the Mississippi Central, with its 259 miles and net income of about $800 per mile; the Missouri, Kansas & Texas, with its 1,738 miles and a net income of less than $750 per mile; the Missouri Pacific, with its 7,261 miles and a net income of a trifle more than $1,000 per mile; Morgan's Louisiana & Texas Railway & Steamship Co., with its 400 miles and an income of $13,000; the New York, Ontario & Western, with its 569 miles and an income of substantially less than $1,000 per mile; the New York, Susquehanna & Western, with its 135 miles and a net loss of $301,000; the Oregon-Washington Railroad & Navigation Co., with its 2,231 miles and a net loss of more than $1,000,000; the Panhandle & Santa Fe, with its 857 miles and a net income of $250 per mile; the Quincy, Omaha & Kansas City, with its 252 miles and a net loss of $168,000; the St. Joseph & Grand Island, with its 258 miles, earning about $300 per mile; the St. Louis Southwestern of Texas, with its 870 miles and a net loss of $1,200,000; the San Antonio & Aransas Pass, with its 739 miles, earning about $300 per mile; the San Antonio, Uvalde & Gulf, with its 317 miles and a net income of $700,000; the Tennessee Central, with its 292 miles and a net loss of $250,000; the Texas & New Orleans, with its 507 miles and a net loss of $90,000; the Toledo, Peoria & Western, with its 247 miles and a net loss of $212,500; the Trinity & Brazos Valley, with its 368 miles and a net loss of $13,800; the Ulster & Delaware, with its 128 miles and a net loss of $47,000; the Wheeling & Lake Erie, with its 511 miles, earning about $750 per mile; or the Wichita Falls & Northwestern, with its 329 miles and a net loss of $89,000?

When I have used the words "net loss" in the foregoing statement I have meant that the road referred to earned that much less than the cost of operation; and when I have used the words "earning" or "net income" I have meant the net railway operating income applicable to the payment of interest on bonds or other obligations or dividends upon capital stock. It must also be remembered that in each instance I have referred to 1922, the year of the largest traffic and the highest rates ever known. While I have mentioned a number of these roads, I have not mentioned a great many others in the same predicament simply because they are of less importance; nor have I mentioned any of the hundreds of roads having gross operating revenues of less than $1,000,000. Most of these roads have not been able properly to maintain themselves, and none of them have been able to add facilities which the increasing commerce of the country requires. It can be safely said that unless these roads, and many others like them, can better their condition they will remain for an indefinite time incapable of rendering efficient service and scores of them must be completely abandoned.

I will take up in my next article the plans that have been suggested for bringing about an improvement in this intolerable condition.

63849—23——2

Article IV.

CONSOLIDATION IMPERATIVE—PRESENT LAW PRESCRIBES DIVISION OF "THROUGH RATE" EARNINGS SO AS TO FAVOR WEAKER AS AGAINST STRONGER CARRIER—BUT THIS ONLY A STEP TOWARD SOLUTION—COST OF MAINTENANCE AND OPERATION MUST BE REDUCED—WAGES AT PRESENT CAN NOT BE REDUCED—READJUSTMENT OF OUR RAILWAY SYSTEMS THE ONLY WAY OUT.

Bearing in mind the statements contained in the preceding article, I come now to consider the plans that have been suggested for the betterment of these roads with insufficient gross or net incomes to meet the demands made upon them.

Let us examine for a moment the general character of the service. From 85 to 90 per cent of the railway traffic of the country is either actually or potentially competitive. At least 70 per cent of the earnings of the railways, taken as a whole, come from what is ordinarily called "through rates." Most of the railways to which I have referred as railways with insufficient earnings are railways which, after a comparatively short haul, deliver their traffic to a connecting road at some junction point. It is obvious, of course, that with the competitive traffic the rates must be the same, no matter whether the freight be carried over one road from the point of origin to point of destination or whether it be carried over two or more connecting roads. If the latter, then the never-ending controversy arises with respect to a division of the rates on through business between the connecting roads. The short haul carrier is usually the unfortunate carrier.

Recognizing this situation, the recent transportation act provided in paragraph 6 of section 15 as follows:

> In so prescribing and determining the divisions of joint rates, fares, and charges, the (Interstate Commerce) commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers and also whether any particular participating carrier is an originating, intermediate or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare, or charge.

This was a step, and the only step, that was possible toward the solution of this exceedingly important phase of the question. It has helped the weaker roads tremendously, but we must, as I shall presently point out, take a further step if we would preserve all of our transportation lines. It is indisputable that the effort toward an increase in net income lies in a reduction of the cost of maintenance and operation. From 50 to 60 per cent of the cost of maintenance and operation is a direct labor cost, and this does not include the high salaries of managerial officers. The remainder consists of materials, supplies, joint facility rents, equipment rent, and taxes. There are some people who seem to think that labor costs can be materially lessened. So far as the near future, at least, is concerned I do not agree with them. I think wages are far more likely to be advanced than diminished. Relatively speaking, there may be, and I believe

there are, inequalities that demand readjustment, but on the whole railway employees are not being paid more than they ought to be paid and in many instances they are being paid less than they should receive. The Government has undertaken to settle disputes concerning wages between railway companies and their employees by adjudication and it must continue to do so if we are to preserve continuity in railway operation. This means that it must apply the fundamental principle of justice in its adjudication, and to me this means, further, that it must award to every competent man or woman a living wage. I will not pause to attempt a definition of this term but no thoughtful man will assert that railway wages tested by this standard are excessive. Therefore the country can not reasonably expect a reduction in the cost of maintenance and operation through a decrease in wages.

Neither the Government nor the railways can control the cost of materials and supplies; whether prices will rise still higher or fall to a lower point depends upon commercial conditions governed by natural forces. There is no reason to believe that joint-facility rents and equipment rents can be lessened until we change our system. Taxes have enormously increased during the last 10 years, and every man knows that it is not probable that they will be diminished. On the contrary, it is almost certain that they will grow larger instead of smaller. In my judgment—and it is a very deliberate judgment—if the cost of maintenance and operation is to be substantially reduced so that transportation charges can be decreased, and at the same time the weaker roads supported, we must look for the remedy of existing ills in another direction. We must look for it through a readjustment of our railway systems and a more efficient management in transportation. I am not challenging either the competency or the honesty of our present railway management. I have had opportunity such as few men have had to observe and study both, and I desire to say at this point that, with here and there an exception, railway managers are as competent as the managers of other great enterprises of which we are so justly proud, and they are just as honest as other men engaged in the laudable effort to make profits for those whom they represent. In the main they are doing the best they can under the policy which now prevails and under the system which has gradually developed in the construction of our railways and their relation to each other.

Keeping constantly in mind the two general objects toward which we are striving (which are, first, to make our railway system efficient and adequate; to do this, as we have seen, our railways must have, and all of them must have, sufficient gross revenues to maintain themselves in a high state of efficiency and sufficient net incomes to make a fair return upon the value of the property rendering the service so as to give them the credit necessary to secure the capital for additions, betterments, and extensions of their facilities; and, second, to reduce the charges for transportation to the minimum consistent with efficient and continuous service), it is my opinion that these objects can be attained, if private operation is to continue, in but one way, and that is through the consolidation of substantially all our railways into a comparatively few systems, say from 15 to 25, and so consolidate them that each of the systems will under normal

conditions, after full maintenance, earn a net income that will pay a fair return, and practically the same fair return, upon the value of the property rendering the service.

I understand perfectly that this will be a process requiring considerable time to work out. In the meanwhile it may be that the proposal which is now pending before the committee of which I am chairman for a consolidation under one control of interchange freight-car equipment may be a wise step in that direction. I express no definite opinion upon that subject and will not discuss it in these articles. I am, however, absolutely certain that there must eventually be the consolidation which I have attempted to describe, and that in no other way will we be able to secure and maintain for the people of the United States the railway transportation facilities which the business of the country imperatively requires.

I will pursue in my next article the inquiry as to the practicability of such a consolidation, the difficulties which attend it, and the several ways in which it can be accomplished.

Article V.

PRACTICABILITY OF AND DIFFICULTIES ATTENDING CONSOLIDATION—CONSOLIDATIONS IN GREAT BRITAIN—PRESENT LAW DIRECTS COMMISSION TO ADOPT A PLAN FOR CONSOLIDATION IN UNITED STATES—PROFESSOR RIPLEY'S TENTATIVE PLAN—OLDHAM'S ANALYSIS AND PLAN.

Continuing my discussion pertaining to the consolidation of our railways into a few great systems, its practicability, the difficulties which will be met, and the way in which they can be overcome, I may remark, in the first instance, that the Government of Great Britain has since the World War done this very thing, so far as the railways of England, Scotland, and Wales are concerned, and has done it for exactly the same reasons which seem to me so potential in our country. The consolidation there was completed in 1922; it is not possible to describe the way in which it was done within the limits I have fixed for myself, but it affords me some gratification to record that the plan, with one important exception, is the plan, in substance, which, as chairman of the Committee on Interstate Commerce of the Senate, I reported to the Senate for the consolidation of the American railways in the early part of the year 1920. By reason of a disagreement between the Senate and the House an essential part of this plan was not adopted. The compulsory feature was eliminated and there can be no complete or effective consolidation until that feature becomes a part of the law. We did, however, take a step—and a very important step—in that direction. I quote the provision which Congress did adopt and which, in my judgment, is the beginning of the plan which must be carried out if the policy of private ownership under governmental control is to be maintained:

(4) The commission shall as soon as practicable prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems. In the division of such railways into such systems under such plan competition shall be preserved as fully as possible, and wherever practicable the existing routes and channels of trade and commerce shall be maintained. Subject to the foregoing requirements, the several systems shall be so arrangd that the cost of transportation as between competi-

tive systems and as related to the values of the properties through which the service is rendered shall be the same, so far as practicable, so that these systems can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of their respective properties.

(5) When the commission has agreed upon a tentative plan it shall give the same due publicity and upon reasonable notice, including notice to the governor of each State, shall hear all persons who may file or present objections thereto. The commission is authorized to prescribe a procedure for such hearings and to fix a time for bringing them to a close. After the hearings are at an end the commission shall adopt a plan for such consolidation and publish the same; but it may at any time thereafter, upon its own motion or upon application, reopen the subject for such changes or modifications as in its judgment will promote the public interest. The consolidations herein provided for shall be in harmony with such plan.

In the bill as agreed to in the Senate committee these provisions were followed by other provisions which, in substance, declared that if the railways had not, after a period of seven years, voluntarily consolidated in accordance with the plan to be adopted by the Interstate Commerce Commission then the Government, through the commission, should take the necessary steps to bring about a compulsory consolidation in accordance with the plan. This is the part of the proposed law to which the House would not agree and which was, after a long controversy, stricken from the bill. The law as it now is, leaves consolidation at the pleasure of the railways, with this one condition: That whatever consolidations do take place after the plan provided for in paragraphs (4) and (5) is adopted shall be in harmony with a furtherance of the plan so adopted.

In the performance of its duty under paragraph (4) the commission very soon after the passage of the transportation act employed Professor Ripley, of Harvard University, a man eminently qualified for the work, to prepare a plan of consolidation which would meet the requirements of the statute. After a year and a half of assiduous labor he presented a plan to the commission. The commission made some changes in it and then, in accordance with the statute, submitted the plan to the public, to the authorities of the several States, and to the railways. For months past the commission has been holding the most extensive and exhaustive hearings all over the country upon this plan, and will shortly hear final arguments upon it at Washington. It will not be long before this plan with such modifications and changes as to the commission seem best will be approved, and thereafter such consolidations as the railways may voluntarily make will be in harmony with that plan.

A fatal defect in the law is that it lacks coercive power, and railways will not voluntarily consolidate unless they believe that it is for their selfish interests to do so. What I want is governmental authority that will compel them to do so in the public interest, and I intend to propose at the coming session of Congress an amendment to the transportation act which will clothe the Government with that power.

Having now outlined a history of the subject, I approach the inquiries with which this article begins: First, is it practicable to consolidate our railways into a few systems that will have substantially the same earning power in relation to the value of their properties? Unquestionably it is. Professor Ripley has prepared and presented a practicable plan; it may not be the best plan, but upon that I express no opinion, for the question is still pending before the commis-

sion. Several other distinguished economists and railway experts have prepared plans, and I may with propriety refer to one prepared by Mr. John E. Oldham, of Boston, who is a profound student of this subject and who is deeply convinced that there must be the consolidations I have suggested. His tentative plan was published in November, 1921, by the Investment Bankers' Association of America and deserves the most careful consideration. He divides the railways of what may be roughly called the eastern district into four systems, leaving the New York Central and the Pennsylvania as two of the systems and with very little change in their present mileage. Substantially all of the remaining railways in that district are divided into two other systems. The Lehigh Valley, the Baltimore & Ohio, and the Reading constituting the basis of one group and the Delaware & Hudson, the Erie, and the Lackawanna forming the basis of the other group. Thus readjusted, these four systems, using the same rates for competitive mileage, would earn substantially the same return, and each of them could be maintained in the highest state of efficiency, with like rates upon competitive products. He finds that similar readjustments in southern and western territory could be made. I am using this simply as an illustration in order to convince the people that consolidations such as I have proposed are not only essential to make our transportation systems efficient but that it is a practicable proposal; and that really all that needs to be done in order to accomplish this end is to reconcile the conflicting views of the present owners and managers respecting the values of the several properties to be consolidated.

I beg to quote the concluding paragraph from an article by Mr. Oldham, published in the Harvard Business Review of January, 1923:

> To make it possible to satisfactorily apply the service-at-cost principle of rate making to the railroads of the country, to readjust capitalization when necessary in conformity with sound standards of credit, so that all roads serving the public will be roads of financial strength, to create conditions under which the traffic of the country can be handled with the greatest efficiency and economy, to secure for the public the benefits of competition without its burdens—these are the factors involved in the matter of railroad consolidations.
>
> In the light of all that is involved it is apparent that no single consolidation is a problem by itself. Each consolidation must be considered in relation to the whole problem of so reorganizing the transportation system of the country that it shall consist of none but strong units each capable of attracting to itself the capital it needs and each capable of furnishing the service to which its patrons are entitled. Every consolidation is a part of the problem of creating a transportation system of such character that a continuation of private management will be justified and will be sanctioned.

My next article will continue the discussion of this subject.

Article VI.

DESIRABILITY OF CONSOLIDATING THE RAILROADS—BEST STUDENTS OF PROBLEM FAVOR CONSOLIDATIONS—OPPOSED BY THE STRONGER RAILROADS, WHO FEAR EFFECT ON THEIR FINANCIAL STANDING—OPPOSED BY PROPONENTS OF GOVERNMENT OWNERSHIP AND OPERATION—ORGANIZATION OF NEW COMPANIES UNDER FEDERAL LAW.

The best minds of America are in absolute agreement respecting the desirability of consolidation. The opposition to it comes from two widely different sources. Most of the big railways are fighting

it, not, as I understand, because they do not see the conclusiveness of the argument which I have presented, but because they fear that the consolidation of a weak road with a strong one will put a burden upon the stronger road that would impair the value of the securities it has issued and affect its financial standing. Another influential body of objectors—and this body is made up largely of men who believe in Government ownership and operation—seem to believe that consolidation would destroy useful competition and that it would increase the influence of the railways in legislation proposed in the interest of the people. They are willing to consolidate all of the railways in Government ownership, but they seem to be unwilling to consolidate them into a few systems so that the Government control of rates will become possible without giving to some railways more than they ought to have and to others revenues which are insufficient to sustain them. I will first examine the validity of the objection urged by the big railways.

Unless settled by agreement, the value of railway property, whether in a condemnation proceeding or for the purpose of fixing rates or in the process of consolidation, presents a judicial question and must finally be determined by the courts, guided by the law of the land. It may very well be that the value of such property when the Government is seeking to acquire it is not precisely the same as when the Government is exercising its rate-making power over it; likewise there may be elements of value which should be considered when it is sought to enforce the consolidation of two properties into a single private ownership which it would not be lawful to consider in either acquisition or rate making by the Government. I do not attempt to say what the courts will finally hold to be the law of the land as to values when two or more public-utility properties are consolidated under compulsion. What I do say is that if the parties to the consolidation can not agree upon values the Government, through some tribunal—and ultimately through the courts—can and will fix these values and that it must be assumed by every loyal citizen that they will be fixed fairly and justly according to the law which governs the case.

When we consider the difference between railways physically, the difference between the localities through which they run, the difference between their opportunities for service, it is manifest that the value of one property may greatly exceed the value of another with which it is proposed to be consolidated, even though they be of equal mileage. It is not proposed, nor can it be assumed, that any injustice will be done in this regard. I do not attempt to anticipate the rulings of the courts in this respect; but I venture the assertion that the broad, general rule must be that values will be determined by a consideration of the contribution which each road is capable of making to the consolidated system when the necessary expenditures are made which will fit it to render that contribution fully and efficiently. It would seem that the fears of the managers of some of the larger railways are unfounded, unless they are based upon the hope of undue profits; and if they are, they ought to be wholly disregarded. I firmly believe that if a compulsory feature were added to the existing law we would see within five years a consolidation, in accordance with the plan adopted by the commission, by agreement among the railways themselves.

There are many ways which the Government may employ in bringing about the result, in the event of a failure or refusal to accomplish it by voluntary action. It can be done through the process of condemnation, or, more easily probably, through the organization of new companies under a Federal statute and the purchase of the stocks, and in some cases the bonds, of the old companies. While I understand perfectly the complexities and difficulties which would be met on the way there is no serious or fundamental obstacle in the path of the Government which would prevent the accomplishment of the purpose in view.

Turning to the other class of objectors, I believe that their opposition is equally without reason. I will not discuss at this point their movement for Government ownership; I will take up that proposal in another article. Just now I will devote myself to their claim with regard to competition and service. The British consolidation, to which I have already referred, practically excludes competition. It is a territorial consolidation. I believe in competition, wherever it is possible to preserve or create it, in the railway transportation of the United States. I do not mean competition in rates; competition in the charges for transportation is not only inconsistent with governmental regulation but it is the open door to discrimination, rebates, bankruptcy, and ruin. The competition I favor is the competition in service. I believe that kind of competition is very desirable. It means accommodating officers and employees; it means that every reasonable effort will be made to meet the convenience and comfort of shippers and passengers; it means progress in the increase of facilities; it means the advance of inventions; it means a motive for the highest efficiency.

In a country like ours it would be exceedingly unfortunate to abandon this kind of competition, and the transportation act specifically provides that the plan of consolidation shall preserve competition as fully as practicable; the plan now being considered by the Interstate Commerce Commission, and all other plans proposed, are based upon competitive service. In my opinion there will be more effective competition when the roads are consolidated in accordance with the direction of the transportation act than there is now, so that all fear on that score may be dismissed.

The suggestion that the influence of consolidated roads in either promoting or preventing legislation would increase is purely fanciful and no one who has the least familiarity with the manner in which railway companies and railway associations attempt to put their views before Congress will seriously urge the objection. There has been a complete revolution in this field of activity during the last 20 years, and the influence of labor unions, farmers' associations, chambers of commerce, railways, civic bodies, and trade organizations of all kinds is brought to bear on legislation in a different way. I have been a close observer of this subject for more than a quarter of a century and I think it can be said with absolute accuracy that the old surreptitious methods have been almost entirely superseded by open investigation and public argument. I do not mean to say that selfishness has disappeared from any of these influences upon legislation but I do mean that, in large measure, they are exerted openly instead of stealthily and secretly.

Nor do I mean to say that the present-day methods are always fair, whether exercised upon the voters in their primary capacity or upon their representatives in legislative or administrative bodies. I know that these investigations, hearings, and arguments are often marked by misrepresentations, half truths, and fallacious reasoning, but these are weaknesses that inhere in every form of free government and they can only be met by intelligence, full information, and fidelity to the public interest on the part of voters and their representatives. Again I record the conclusion that there is no valid objection to the consolidation of the railways along the lines of the transportation act, and that the hope of successful regulation of railway transportation and of reducing railway charges lies in following the course there outlined. I believe sincerely that if it is not followed we must adopt the policy of Government ownership and operation of the railways.

In my next article I shall endeavor to point out what I regard as the fundamental objections to that policy.

Article VII.

OBJECTIONS TO GOVERNMENT OWNERSHIP AND OPERATION—DISASTROUS TO NATIONAL CREDIT—"POLITICS" WILL ENTER INTO RAILROAD MANAGEMENT—GREAT LOSSES AND UNDERMAINTENANCE DURING GOVERNMENT OPERATION—BENEFICIAL STATE CONTROL WOULD BE COMPLETELY ABOLISHED—LOSS OF STATE REVENUE FROM RAILROADS—RIVER AND HARBOR "PORK BARREL" SCANDALS OF THE PAST WILL BE MULTIPLIED.

The first objection to Government ownership and operation of the railways in the United States is a financial one; the Government of the United States is now indebted upon its bonds and other obligations of like character in the sum of more than $23,000,000,000. If we may assume the railways are of the value (as fixed by the Interstate Commerce Commission for rate-making purposes) of more than $19,000,000,000, we would be compelled to add to the national debt that sum in order to acquire them. I think we all recognize how disastrous that would be to the national credit, even though we might fairly expect to secure from their operation an amount that would be sufficient to meet the interest on the added debt. The uncertainty that would attend that expectation, covering as it does an indefinite future, would, in my judgment, materially increase the rate of interest which the Government would be compelled to pay, not only upon the bonds that would represent the purchase of the railway property but upon the existing obligations of the United States as they come to be refunded in the course of time. This would be true in a proportionate degree even though the claims of those who insist that the valuation now fixed by the Interstate Commerce Commission is more than the actual worth of the railway properties were well founded. I will not discuss that subject at this time but will do so in another article. This objection to Government ownership at the present time or in the near future, while serious enough, is not from my standpoint as fatal to the proposal as others I have in mind.

Second, it is obvious that in a country like ours when the Government enters any business enterprise the management of that enterprise is bound to be deeply affected by what we ordinarily call "politics." The shippers will want low rates, the employees will want high wages, communities will want favoritism, and there will be a constant demand on the part of many of our people for economy at the expense of efficiency; and all these conflicting interests will urge their demands first through the voters in political campaigns, and after that through Congress. It seems to me that the result would necessarily be a never-ending struggle, constant confusion, and the most grievous injustice. If it could be asserted with any truth that the Government could maintain, operate, and expand the railway properties at less expense than private owners, that fact would mitigate in some degree this objection. There is, however, no possible basis for that belief in our past experience in business affairs; nor is there any basis for it in the Government operation of railways during the war nor in the history of other countries which have tried the experiment of government ownership in times of peace.

As I have remarked more than once, I believe that the Government had a better chance to prove whatever merit there is in Government operation during the war, when there was no limit as to its power and when selfish interests were largely subordinated to praiseworthy loyalty, than it can possibly have in times of peace. It will be remembered that we adopted a very different policy from that of Great Britain. The railways of England and Scotland carried troops and all war material without charge, the Government having guaranteed a net income. In our country the Government was charged the ordinary rate in all movements, whether passenger or freight. This was, of course, a mere matter of bookkeeping, because our roads were being operated under a guaranty just as those of England and Scotland were, and I mention it only to disclose the opportunities which our Government had to make a favorable showing of net income from operation. The disappointing fact is, however, that during the 26 months of Government operation the net loss which had to be met, or will have to be met, by appropriations from the General Treasury was more than $1,200,000,000. This, of course, does not include the payments under the guaranty continuing the standard contracts for a period of six months after the roads were returned to their owners on March 1, 1920. If the Government had settled the claims for additional wages in 1919, instead of passing them over to the United States Railroad Labor Board, without increasing rates, the net loss would have been at the rate of $90,000,000 per month instead of $45,000,000 or $46,000,000 per month.

In this connection I desire to say that the railways were as well managed during these 26 months as could be expected from any Government management. Mr. McAdoo, the first Director General of Railroads, and Mr. Hines, who succeeded him, were highly competent men. They called to their assistance the best, most competent, and most experienced railway managers of the country, and their employees generally rendered the most loyal service. They had greater authority than will ever again be given to administrative

officers, and yet under all these advantages the Government suffered the loss I have mentioned.

Not only so, but it returned the railroads to their owners with undermaintenance amounting to more than $200,000,000. This history will not incline the people to a repetition of that experience unless it becomes absolutely necessary in order to furnish the people with the transportation facilities which they must have.

Third, a great deal of complaint has been heard with respect to the transportation act in that, as it is alleged, it withdrew certain authority in regulation from the States and the State railroad commissions, and enlarged the power of the Federal Government over intrastate rates. The complaint is much exaggerated, but that the transportation act did somewhat increase the authority of the General Government over these matters can not be questioned, and there is an energetic effort being made to restore State authority over intrastate rates.

If the policy of Government ownership is approved it will destroy all State authority and authority of State commissions. When all the railways belong to the Government of the United States it is obvious that the States can have nothing to say with respect to rates or with respect to any other matter of control or regulation. It seems to me that the situation thus created would be exceedingly unsatisfactory and unfortunate. There are a great many things which the States can do for their people infinitely better than the Federal Governmena can do them, and I am much more afraid of centralizing all authority in Washington than I am of the influence of consolidation. The machine known as the Federal Government is tremendously large now and it is bound to grow in size, but we ought to consider very carefully the addition of power which can be better exercised by the States, unless it becomes imperative to do so.

Fourth, the railways now pay more than $300,000,000 per year in taxes. A very large part of this enormous sum represents taxes paid to the States or to the counties or municipalities of the States. If the Government acquires the railways, this source of revenue to the several States will be entirely lost, for neither the States nor any of their political subdivisions can tax the property of the United States. As an illustration, the State of Iowa levied taxes upon all the railways in the State last year amounting to $6,978,306. If Government ownership is brought about and the requirements of the State remain the same, this sum must be made up by additional taxes upon the farms, factories, banks, stores, and other private business enterprises. When we remember that one of the great evils of this time is the very rapid increase of tax-exempt securities we ought to hesitate a long time before we increase tax-exempt property by something like $19,000,000,000.

Fifth, the last objection which I shall urge in these articles is the most serious of all the objections I have made. I think we all agree that it would be most unwise to raise the additional capital that would be required for additions, betterments, and extensions through either freight or passenger rates. It is, I think, admitted that the economic principle known as service at cost (including in cost a fair return upon capital) is the only just way of dealing with the public in fixing rates to be charged by common carriers for transportation. If this be granted, then the money annually needed for additions,

betterments, and extensions, properly chargeable to capital account, must be raised by taxation and taken from the Treasury of the United States by acts of Congress appropriating the sums which from time to time are to be expended.

We have seen that for very many years to come the annual expenditure for additions, betterments, and extensions will be at least $750,000,000 if we would make our railway system fully adequate for the business of the country. Every year Congress would be called upon to make these appropriations; they will aggregate one-fourth of the present cost of maintaining the Government of the United States. Every State—indeed, every community—will be clamoring for its share or more than its share of this vast sum of money, insisting through skillful advocates that its needs are greater than the needs of any other State or community. All the scandals of the river and harbor appropriations, which in the past have shocked the sensibilities of the people, will not only be revived but will be multiplied fivefold.

There will be combinations and trades among Members of Congress in their frantic efforts to secure the expenditure of this money in particular States or localities. The public interest will be forgotten in this mad scramble for appropriations, and our railways will fall into utter confusion.

I am not suggesting dishonesty on the part of Members of Congress, for it is the most natural thing in the world for a Member of the House from one district or a Senator from one State to look upon the enlargement of the facilities of transportation in his own district or in his own State as a paramount necessity. No man with the good of his country at heart can contemplate this struggle for appropriations with complacency. The result would be periods of wild extravagance, followed by periods of indefensible parsimony. Under any such policy our railways will not develop into a well-rounded, efficient system. I have no desire to conceal from myself or from my readers the perplexing difficulties with which we will be constantly confronted in the control and regulation of our railways under private ownership and management; but they shrink into insignificance when compared with the disasters which must befall us if we attempt public ownership and management.

In my next article I will take up the question relating to the valuation of the railway properties.

Article VIII.

VALUATION OF RAILWAY PROPERTIES—RAILROAD VALUES MUST BE DETERMINED WHATEVER POLICY WE PURSUE—COMMISSION HAS FIXED VALUE FOR RATE-MAKING PURPOSES AT $18,900,000,000—EFFORTS TO LOWER THIS AMOUNT BY LEGISLATIVE ACTION—COURTS ALONE HAVE POWER TO FINALLY DETERMINE VALUE OF PROPERTY.

The questions which arise in the consideration of the value of our railway property used in the service of transportation are overwhelmingly important no matter what may be our policy in the future. They are important if we make no change in our present system of regulation, because the valuation constitutes the basis upon which a

fair return is to be ascertained. They are important if we bring about the consolidations which I believe are necessary if private ownership is to continue. They are important if we go forward (or backward, as I think) to Government ownership, because the values of the several properties to be acquired must either be agreed upon or adjudicated before the Government can take title to them.

In this discussion I intend to limit myself to the value of railway property for rate-making purposes. As I have already said in a former article, there may be some elements of value that are not common to the process of acquisition and the process of rate making. It is not necessary for my purposes to enter into that subject. My present object is to inquire into the justice of the criticisms which have been leveled against section 15–a of the transportation act, the act under which the Interstate Commerce Commission is now proceeding. The commission, about the 1st of September, 1920, found tentatively that the value of all the railway property in the United States used in the service of transportation was $18,900,000,000. To that amount must be added the sums expended since that time for additions, betterments, and extensions chargeable not to maintenance and operations but to capital account. It has been asserted by men holding high and responsible stations, or seeking these stations at the hands of the people, that this valuation is from seven to ten billions of dollars more than the real value for rate-making purposes.

At a meeting held recently in Chicago, called by Senator La Follette and over which he presided, it was practically resolved that this valuation by the Interstate Commerce Commission should be reduced to about $10,000,000,000, and that this result should be accomplished, first, by further appeal to the commission, and that failing through some form of congressional legislation. I do not know, nor do I pretend to know, the value of the railway property of the United States, but I believe that I do know the method, and the only method, by which that value can be finally determined. I shall endeavor to point out that method for the purpose only of establishing beyond all reasonable controversy the conclusion that Congress can not, by any kind of legislation, fix the value of these properties, nor affect in the least degree, legally speaking, the determination by the courts of these values.

It is my contention that the value of property, whether taken for public use or whether considered for rate-making purposes, presents a judicial question, and that Congress and all other legislative bodies are powerless either to declare what the value is or to prescribe or exclude elements of value which will bind the courts in reaching a result. If this be not true, then the Constitution of the United States and the constitutions of all of the States, which declare that no person shall be deprived of his life, liberty, or property without due process of law, and that private property shall not be taken for public use without just compensation, are mere rhetorical utterances intended to delude the country into the belief that we are living in a free country, whereas, in fact, we are living under the reign of medieval tyranny and spoliation.

I will not enlarge this discussion by citing many of the judicial authorities that will be found in the decisions of the courts of last resort in almost every State in the Union but confine myself mainly

to the law as it has been federally settle by the Supreme Court of the United States.

In the case of the Monongahela Navigation Co. *v.* United States (148 U. S. 312), Congress had authorized the institution of proceedings for the acquisition of a lock and dam which constituted a part of the improvement of the Monongahela River. The entire improvement consisted of the construction of a series of locks and dams for the purpose of making the Monongahela River navigable at all seasons of the year. The improvement was at that time owned by a corporation which had been organized under the laws of the State of Pennsylvania. In the act Congress attempted to exclude from consideration in the condemnation proceedings the franchise as an element of value in determining the award. Upon this point the Supreme Court said:

> By this legislation Congress seems to have assumed the right to determine what shall be the measure of compensation. But this is a judicial and not a legislative question. The legislature may determine what private property is needed for public purposes; that is a question of a political and legislative character. But when the taking has been ordered then the question of compensation is judicial. It does not rest with the public, taking the property, through Congress or the legislature, its representative, to say what compensation shall be paid, or even what shall be the rule of compensation. The Constitution has declared that just compensation shall be paid, and the ascertainment of that is a judicial inquiry. In Charles River Bridge *v.* Warren Bridge (11 Pet. 320, 571) Mr. Justice McLean in his opinion, referring to a provision for compensation found in the charter of the Warren Bridge, uses this language: "They (the legislature) provide that the new company shall pay annually to the college, in behalf of the old one, a hundred pounds. By this provision it appears that the legislature has undertaken to do what a jury of the country only could constitutionally do—assess the amount of compensation to which the complainants are entitled. See also the following authorities: Com. *v.* Pittsburg & C. R. Company (58 Pa. St. 26, 50); Pennsylvania R. Company *v.* Baltimore & O. R. Company (60 Md. 263); Isom *v.* Mississippi Cent. R. Company (36 Miss. 300).
>
> In the last of these cases, and on page 315, will be found these observations of the court: "The right of the legislature of the State by law to apply the property of the citizen to the public use, and then to constitute itself the judge of its own case, to determine what is the just compensation it ought to pay therefor, or how much benefit it has conferred upon the citizen by thus taking his property without his consent, or to extinguish any part of such compensation by prospective conjectural advantage, or in any manner to interfere with the just powers and province of courts and juries in administering right and justice, can not for a moment be admitted or tolerated under our Constitution. If anything can be clear and undeniable, upon principles of natural justice or constitutional law, it seems that this must be so."
>
> We are not, therefore, concluded by the declaration in the act that the franchise to collect tolls is not to be considered in estimating the sum to be paid for the property.

Since the announcement of the decision in the case from which I have just quoted the principle there established has never been questioned. It seems to me utterly indefensible for men holding or seeking public office, and who know or ought to know that Congress can not prescribe a rule for the ascertainment of values, to inflame the passions and prejudices of the people upon this subject by the promise of legislation which they know can not be enacted—unless, indeed, their real object is the complete overthrow of our form of government.

My next article will continue this discussion.

Article IX.

A CONTINUATION OF THE DISCUSSION OF RAILWAY VALUES—SUPREME COURT'S RULE FOR ASCERTAINMENT OF VALUE OF RAILWAY PROPERTY—CONGRESS POWERLESS TO NULLIFY COURT'S FINDING—SECTION 15–A SPECIFICALLY STATES VALUE SHALL BE DETERMINED ACCORDING TO THE LAW OF THE LAND.

I shall not enter into any discussion of the rule which has been declared by the Supreme Court for the ascertainment of the value of railway property; the question has been before that court many times and without respect to my personal opinion as to the soundness of the decisions it seems to me that the rule has been definitely and finally established. I am dealing with the control and regulation of our railways from a legislative standpoint, and my purpose is fulfilled when I make it clear that, so far as values are concerned, Congress has no jurisdiction whatever. We must accept the result of a judicial investigation guided by the Constitution of the country and the law of the land.

I understand perfectly that the controversy as to values is still in progress, notwithstanding the opinions which have from time to time been rendered by the Supreme Court, but with that phase of the railway problem I have nothing to do in a legislative way, and, as stated in the beginning, I am considering only the soundness and fairness of section 15–a in so far as the values of railway properties are concerned. I repeat that when the transportation act was passed, and for years before, it was the settled law of the United States that the ascertainment of the value of railway property for rate-making purposes presented a question that must be determined by the courts of the country; a question that could not be affected by legislation.

I turn now to a brief comment upon section 15–a, which relates to the value of railway property. Paragraph (4) of this section is as follows:

> For the purposes of this section, such aggregate value of the property of the carriers shall be determined by the commission from time to time and as often as may be necessary. The commission may utilize the results of its investigation under section 19–a of this act (interstate commerce act), in so far as deemed available, and shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes, and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes. Whenever pursuant to section 19–a of this act the value of the railway property of any carrier held for and used in the service of transportation has been finally ascertained, the value so ascertained shall be deemed by the commission to be the value thereof for the purpose of determining such aggregate value.

It is to be observed that the commission, in determining values, is authorized, in reaching preliminary results, to utilize its investigations under section 19–a of the interstate commerce act. This section is what is commonly known as the La Follette Valuation Act and when the commission has finally determined the value of the property of any carrier under the valuation act it is directed to use that value in reaching a conclusion as to the aggregate value of all the railway property.

It is to be observed, further, that paragraph (4) contains this declaration: "and shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes." There could not be a fairer or more complete legislative rule than this. If any mistake has occurred or shall hereafter occur in the valuation of railway properties it is not a mistake in legislation. If the commission does not properly apply the law of the land in the performance of its duty, then upon appeal to the courts the error will be corrected by the only authority in our Government competent to render a final decision respecting values. I very confidently submit to the people of my State and to the country that whatever other faults may be found in section 15–a, no just criticism can be laid against its provisions relating to the value of railway property.

In my next article I will take up the rate-making paragraphs of that section.

Article X.

RATE-MAKING PROVISIONS—COMMISSION GIVEN AUTHORITY TO PRESCRIBE RATES THAT WILL YIELD A FAIR RETURN—MUST MAKE PUBLIC THE AGGREGATE PROPERTY VALUE—COUNTRY DIVIDED INTO RATE GROUPS—IN NO SENSE IS THIS A GUARANTY.

The rate-making provisions of section 15–a are to be found in paragraphs (2) and (3). I quote them for convenience:

(2) In the exercise of its power to prescribe just and reasonable rates the commission shall initiate, modify, establish, or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the commission may from time to time designate) will, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *Provided*, That the commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

(3) The commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient, and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: *Provided*, That during the two years beginning March 1, 1920, the commission shall take as such fair return a sum equal to 5½ per cent of such aggregate value, but may, in its discretion, add thereto a sum not exceeding one-half of 1 per cent of such aggregate value to make provision in whole or in part for improvements, betterments, or equipment which, according to the accounting system prescribed by the commission, are chargeable to capital account.

It will be noted that the authority of the commission is to prescribe such just and reasonable rates as will yield a fair return. This phase of authority added nothing to existing law; that part of the section simply expresses the command of the Constitution. It is well that this thought be firmly fixed in our minds as we proceed with the analysis. The new legislation in these paragraphs consists of two permanent provisions and one temporary arrange-

ment. The first permanent addition to the law is in that part of paragraph (2) wherein it is declared that rates shall be so adjusted that the railways, as a whole, will "earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation," and that part of paragraph (3) in which it is declared: "And such percentage shall be uniform for all rate groups or territories which may be designated by the commission," and further: "In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient, and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation."

The second permanent addition to the law is to be found in the first lines of paragraph (3), as follows:

> The commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon.

These two permanent regulations establish a new legislative policy; they nationalize the facilities of interstate railway transportation. Their purpose is to do all that can be done to maintain and make efficient all the railways which are performing the service of transportation.

Government ownership with all its disadvantages has one marked advantage, namely, that it insures service, efficient or inefficient, upon all our railways. The provisions of section 15–a, last quorted, furnish the nearest approach to this advantage possible under private ownership. These additions to the existing law would, under normal conditions, furnish a fair return if all our railways were owned and operated by a single corporation. If our one thousand or more roads were so situated that each of them could earn its fair share of this return the problem would be solved. The weakness of the new policy (and it is an inescapable weakness until the consolidations I have suggested in previous articles are brought about) is that the aggregate earning may be sufficient but its distribution among the separate railways may make one railway rich and leave another bankrupt. It is, however, a step, and a necessary step, in the right direction.

It must not be inferred that because these provisions adopt a new principle in legislation the principle had not been recognized and applied in practice by the Interstate Commerce Commission in fixing just and reasonable rates; the commission had more than once grouped the railways in certain districts and had established rates common to all in the group, not determined by the conditions of any particular road but by the necessities of all of them. It is, in my judgment, not only a sound policy but an imperative policy if we are to maintain our present transportation facilities. As an illustration, take the country west of the Missouri River; if the rates in the territory served by the Union Pacific Railroad were fixed at the lowest point that would maintain the Union Pacific Railroad Co., it is, I think, capable of mathematical demonstration that all, or practically all, of its competitors would, in the end, be compelled to abandon their roads and cease their service. It would be easy to point out

similar situations in other parts of the United States, but it is unnecessary to do it. We must adopt one of three plans. First, rates may be fixed so that the richest and most prosperous road will earn no more than a fair return; this would simply destroy half, or more than half, our railway mileage. Second, we may fix rates so that the least prosperous of the roads will earn a fair return; this would be intolerable because it would give grossly excessive profits to many others. Third, we may fix rates basing them upon the railroads as a whole, or upon such groups as may be ordered by the commission. This is the plan adopted by the transportation act and it is the only course consistent with justice to the railways and to the people whom they serve.

What I have termed a temporary arrangement is to be found in the final clause of paragraph (3). It expired, by its own terms, March 1, 1922, and no longer affects the situation. It has never been alleged, I believe, that the fair return of 5½ per cent, with discretion to the commission to add one-half of 1 per cent for additions and betterments, is excessive. In fact, it was intended, and it has operated, as a restriction of the power of the commission rather than an enlargement of its authority. Its merit is found in the steadiness which it gave the railroad credit while we were passing through an exceedingly critical period which necessarily followed the war and transition from Government operation to private operation. It has been misrepresented everywhere as a guaranty to the railroads; it is absurd to so describe it, as is made evident by the fact that in 1920 the net income of all the railroads was about one-third of 1 per cent; in 1921, about 3 per cent; and it has never been suggested by anyone, whether representing the railroads or the public, that the Government is liable for the difference between these rates of return and the 5½ per cent. It is wholly unnecessary further to enlarge upon this proviso.

I will undertake in my next article to review some of the arguments which have been presented in favor of the repeal of section 15–a.

Article XI.

DISCUSSION OF SECTION 15–A.—CONDITION OF AGRICULTURE IN 1920 AND 1921—SECTION 15–A FACILITATES REDUCTION IN RATES—SENATOR CAPPER'S PROPOSAL TO ABANDON SO-CALLED "LAME DUCK" ROADS.

It is my purpose now to review the effort to repeal section 15–a and some of the arguments that have been made in behalf of the bills which have been introduced in Congress looking to that end. I shall give no attention to the wild and irresponsible statements which have been circulated throughout the country by those who willfully misrepresent the provisions of that section. I shall take Senator Capper, of Kansas, as a fair-minded advocate of its repeal and consider for a brief time his view of the subject as expressed in two speeches which he made during the last session of the Senate in favor of his bill to repeal this section. The first was delivered on November 23, 1922, and the second, February 1, 1923.

The basis of Senator Capper's argument is that in the last half of 1920 and during 1921 the prices of agricultural products (with a few

exceptions) fell to pre-war levels or below, that the farmers could not produce their various commodities and sell them at a profit, that under these conditions it became the duty of the railways to reduce transportation charges to a point that would enable the farmers to produce and sell at a profit, that in the event of a refusal on the part of the railways to so reduce their charges it was the duty of the Government to compel that reduction, and, finally, that section 15–a prevented the Interstate Commerce Commission from ordering the reduction and therefore it should be repealed.

Some of Senator Capper's statements must be at once accepted; it is true that agricultural prices generally declined until the farmers of the country suffered hardships and losses that can not be exaggerated or overestimated; but his main conclusion that the Government ought to compel the railways to bear these losses and, in substance, guarantee the farmers a profit can not be accepted as a sound proposition either in morals or in economics. I think it is true that the Government in fixing rates should take into consideration the value of the commodities transported and that when an industry is depressed the rates for the transportation of those commodities should be reduced to the lowest point consistent with the command of the Constitution that it shall not take private property for public use without just compensation; but, after all, it was the low market price of agricultural products which inflicted these losses, and over that subject the Government at this time has no control.

It ought to be remarked at this point that the Interstate Commerce Commission did order general reductions in rates on agricultural products and that it is now true, and has been true for nearly two years, that the railways are carrying the products of the farm for 20 per cent less, ton for ton, car for car, than the average of all other commodities. It may be that the rates on agricultural products ought to be reduced still further; that is a question for the commission, and all that I suggest is that there is nothing whatever in section 15–a that prevents any distribution of rates that conditions may require. The fact is that section 15–a facilitates the very policy which Senator Capper demands; namely, that if the revenues, as a whole, are sufficient the requirements of the Constitution are fulfilled and the revenues from the carriage of particular commodities become immaterial.

I do not dispute the accuracy of the very graphic description which Senator Capper has given the country of the misfortunes which have fallen upon the farmer, and it is manifest that all the just powers of the Government should be exercised to relieve him, but it must be obvious that a reduction in agricultural rates that will compel half our railway mileage to cease rendering any transportation service would not only fail to relieve him but would complete the disaster which he is now confronting. His prominent illustrations, used to show that agricultural rates could be reduced, are the Union Pacific and the Atchison, Topeka & Santa Fe, and these are two of the most prosperous roads in the United States. He charges both of these roads with false bookkeeping and excessive maintenance in order to conceal their real net income. I do not intend to enter into an examination of their reports; I say only that if they have done what Senator Capper charges the Interstate Commerce Commission has ample

power to reform their accounts and make their true net income apparent.

The rules of the Interstate Commerce Commission prescribe just how the accounts shall be kept, and section 15–a, in paragraph (2), the rate-making provision, provides "so that carriers as a whole * * * will, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment, earn, etc." I am considering in this article the terms of the law and not the efficiency of its administration.

In the address of February 1, to which I have referred, Senator Capper says:

> Mr. President, the vice of section 15–a lies in the fact that it attempts to provide a fixed return to be earned upon the aggregate value of all railroad properties—good, bad, and indifferent. Virtually this valuation is based upon the present cost of reproducing the lines. The result is that no matter how worthless a road may be it is considered entitled to earn 5½ per cent on what it would now cost to rebuild it. For example, the Atlanta, Birmingham & Atlantic, now passing through its second receivership in less than 10 years, can not earn its operating expenses; but the Interstate Commerce Commission announces a tentative valuation of $25,000,000 for this road. Under section 15–a that $25,000,000 is added to the valuation on which the public must pay a return in the shape of freight rates. This means that all the southern roads in that rate group are permitted to charge rates based on their own value plus the $25,000,000 valuation put on this worthless road.

Further, he said:

> In most instances these "lame duck" roads are notorious for their financial failure. In some cases they were originally built to serve some mining or lumbering areas, and the mines have been worked out and the regions denuded of saw timber, and the traffic now originating in the territory served is inadequate to provide profitable operation of the roads. To care for these roads the rest of the country must endure rate extortion. Then, as we have seen, these strong profitable carriers refuse to give any part of these surplus earnings to the Government for the support of these "lame duck" roads.

In my next article I will continue the consideration of this subject.

Article XII.

RECAPTURE PROVISIONS.

Whatever may be the exaggerations in the extracts from Senator Capper's speech quoted at the conclusion of my last article, it is obvious that his proposition is that the roads which he terms "lame duck" roads must go out of business; that is to say, be dismantled and abandoned. This presents the real issue of the fight to repeal section 15–a. I venture the assertion that when Senator Capper and those who are with him in the effort to repeal this section fairly realize just what this means to the country they will hasten to reconsider their conclusion.

There are, undoubtedly, a few miles, or even a few hundred miles, of railways in the United States which ought to be abandoned and can be abandoned without any loss to our transportation facilities; but if the view announced by Senator Capper is to be adopted, there must be from 70,000 to 100,000 miles abandoned, and, with all respect to my able and distinguished colleague, such an outcome as that is simply unthinkable. His own State is typical of the general situation. The Atchison, Topeka & Santa Fe had a net operating

income, in 1921, of $46,234,000; it operated 8,833 miles of railway. In 1922 it had a net operating income of $35,509,000, and operated 8,857 miles. In 1921, its net operating income per mile of road was more than $5,000; in 1922, its net operating income per mile was about $4,000.

The Union Pacific, in 1921, had a net operating income of $28,352,000, and operated 3,622 miles; its net operating income per mile was about $8,000. In 1922, it had a net operating income of $26,621,000, and a net operating income per mile of about $7,000.

I will now examine some of the other roads which serve Kansas. The Chicago, Rock Island & Pacific had a net operating income, in 1921, of $15,198,000 and operated 7,661 miles; it had a net operating income per mile of about $2,000. In 1922 it had a net operating income of $13,934,000, or a net operating income per mile considerably less than $2,000. If rates were reduced as proposed by Senator Capper, what would become of the service of the Chicago, Rock Island & Pacific?

The Missouri Pacific serves a very large territory in Kansas. Its net operating income, for 1921, was $9,884,000; it operated 7,300 miles; its net operating income per mile was a trifle above $1,000. In 1922, its net operating income was $8,247,000, and its net operating income per mile was substantially $1,000. I ask Senator Capper what would happen to the Missouri Pacific if rates were reduced so as to bring the net operating income of the Union Pacific and the Atchison, Topeka & Santa Fe to the point he suggests?

The Kansas, Oklahoma & Gulf operates in Kansas. In 1921 its net loss upon 317 miles of road was $7,449. In 1922 it had a net operating income of $526,000. What would be the outcome to this property if the policy, which the Senator from Kansas advocates, should be pursued?

The St. Joseph & Grand Island serves a very considerable territory in Kansas. In 1921 its net operating income was $141,000, and it operated 258 miles of road. In 1922 its net operating income was $70,029, or less than $300 per mile. Senator Capper would see this road go into the scrap heap along with the Atlanta, Birmingham & Atlantic.

The Kansas City, Mexico & Orient in 1921 operated its 737 miles of road at a net loss of more than $800,000. In 1922 its net loss (by neglecting maintenance) was a trifle under $500,000. Under the policy of obliterating the so-called "lame-duck" roads this property must go into the junk pile.

If I were to go over every road which serves the people of Kansas with transportation, it would be found that about one-half the railway mileage in that State, under the policy advocated by the Senator from that State, would in the course of time be given up. It needs no argument to convince the people that this policy can not be pursued. Rather than to destroy the country in this fashion it would be infinitely better to go to Government ownership and supplement insufficient revenues by appropriations from the General Treasury. All the reasons urged by Senator Capper for the repeal of section 15–a will, when the situation is correctly understood, be the most persuasive arguments in favor of its retention until, at least, we can bring about the consolidations which alone can save the American railways from destruction or from Government ownership.

Senator Capper is very pessimistic about another provision in section 15–a, to which I will now give brief attention. Knowing that some roads would earn under any possible distribution of rates more than a fair return, the law provides in paragraph (6) that:

> If, under the provisions of this section, any carrier receives for any year a net railway operating income in excess of 6 per cent of the value of the railway property held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier, and the remaining one-half thereof shall, within the first four months following the close of the period for which such computation is made, be recovered by and paid to the commission for the purpose of establishing and maintaining a general railroad contingent fund as hereinafter described.

He says that many railways have earned more than 6 per cent but that they have refused to pay one-half the excess to the Government, claiming that this part of the law is unconstitutional. He says the Interstate Commerce Commission has not attempted to collect the money due the Government under this clause and that the attempt to recapture these excess earnings is a complete failure. It is quite evident that my colleague is so bitterly opposed to the section itself that he rather hopes that this part of it will not be successful. What is the truth about it?

In 1920 there were substantially no excess earnings; in 1921 a comparatively small amount; in 1922 there was a large amount earned by various railroads in excess of 6 per cent. It is true that the railway companies which are earning the excess incomes have insisted that the transportation act in this respect is unconstitutional, but it must be remembered that at one time or another the railroad companies have claimed that practically all the effective parts of the interstate commerce act were unconstitutional.

Senator Capper, as already suggested, delivered his speeches in the Senate on November 23, 1922, and February 1, 1923. There was then pending in the District Court of the United States for the Eastern District of Texas a case brought to test the constitutionality of the recapture provisions of the transportation act. It was carried to a decision with unusual promptitude and was decided shortly after Senator Capper made his last speech in the Senate. The court held the act, in this respect, to be constitutional. The opinion will be found in 287 Federal Reporter, 728. The carrier immediately appealed from the decision to the Supreme Court of the United States, and the case is assigned for hearing in that tribunal on November 12 next. Instead of being negligent, this indicates extraordinary diligence on the part of the commission, and I venture to say that the commission is doing everything in its power to collect these excess earnings which aggregate a very large amount; and instead of being censured for delay, it ought to be commended for marked activity and pronounced success.

It will be remembered that practically all the excess earnings up to this time are for the year 1922 and that while Class I roads make tentative monthly reports their excess earnings could not be definitely ascertained until their annual reports were made and examined. This work could not be done until well along in 1923. Moreover, the amount of excess earnings with respect to any particular road can not be computed finally until the commission completes its valuation of the property of that road. There is absolutely no cause for com-

plaint, and I think it may be assumed, however doubtful Senator Capper may be about it, that if the Supreme Court sustains the decision of the district court all the money due from the roads with net operating incomes above 6 per cent will very soon be paid into the Treasury of the United States.

I have not referred to the statements made by Senator Capper respecting the dividends paid by some of these railway companies, however misleading they may be, because these things are not pertinent to the questions I am discussing, nor do they bear even remotely upon the demand for the repeal of section 15–a. I agree that some railway properties are earning more than they ought to earn, but if this section were repealed the effect would be, in my judgment, to increase rather than decrease the earnings of these fortunate properties; for it can not be doubted that there would then be an attempt to establish rates based upon the necessities of the less prosperous roads.

This concludes my discussion of the railroad problem from a legislative standpoint; a little later I shall submit to the people of Iowa some facts respecting other phases of the subject, hoping to correct the misunderstandings which have arisen as to the relation between the business of furnishing transportation service and other forms of industrial activity.

○

LK.26.3.64.

PLEASE DO NOT REMOVE
CARDS OR SLIPS FROM THIS POCKET

UNIVERSITY OF TORONTO LIBRARY

HE
2757
1923
C84

Cummins, Albert Baird
Railway transportation in
the United States

UTL AT DOWNSVIEW
D RANGE BAY SHLF POS ITEM C
39 12 29 07 04 021 3